

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

ORION INTERNATIONAL CONSULTING GROUP, INC.,	)	
	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	
THE ORION RECRUITING GROUP LLC,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, Orion International Consulting Group, Inc. (“Orion International”), for its complaint against defendant, The Orion Recruiting Group LLC (“Orion Recruiting”), alleges:

**THE PARTIES**

1. Orion International is a corporation organized and existing under the laws of the State of North Carolina, with a principal place of business in Raleigh, North Carolina.

2. Upon information and belief, Orion Recruiting is a Delaware Limited Liability Company, with a principal place of business in La Mesa, California.

**JURISDICTION AND VENUE**

3. This action arises under the Trademark Act of 1946, 15 U.S.C. §1051 et seq. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 (federal question jurisdiction) and §1338 (trademark), and 15 U.S.C. §1121 (trademark).

4. Plaintiff's claims of State Deceptive Trade Practices and Common Law Service Mark Infringement relate directly to plaintiff's substantial claims under the Lanham Act, and arise from the same nucleus of facts as plaintiff's claims under the Lanham Act. The Court has jurisdiction as to these claims under 28 U.S.C. §1338(b), as well as supplemental jurisdiction under 28 U.S.C. §1367.

5. Venue is proper in this District, pursuant to 28 U.S.C. §1391(b).

### **FACTS**

#### **a. Orion International's Mark and Services**

6. Orion International is an employment recruiting firm, and provides services of employment hiring, recruiting, placement, staffing and career networking, arranging and conducting hiring conferences, and management and business consulting in the field of employment and hiring. It has provided these services using the service mark ORION INTERNATIONAL in interstate commerce since 1991.

7. Orion International owns United States Service Mark Registration 2,825,223 for ORION INTERNATIONAL in International Class 35 for "employment hiring, recruiting, placement, staffing and career networking services." The registration was issued March 23, 2004, and arose from Application Serial No. 78/236,384, filed April 10, 2003. Registration 2,825,223 is based on a first use date of 1991. This registration is on the Principal Register. A copy of Registration 2,825,223 is attached to this Complaint as Exhibit 1.

8. In addition to the federally registered service mark ORION INTERNATIONAL, Orion International owns the common law mark ORION INTERNATIONAL for the services described in paragraph 6.

9. Orion International has provided the services described in paragraph 6 in interstate commerce under the ORION INTERNATIONAL mark since 1991.

10. The ORION INTERNATIONAL mark has, by virtue of its use by Orion International in connection with the services described above, become known to employers and job seekers and others in the marketplace, to identify the services as those of plaintiff.

11. The mark ORION INTERNATIONAL is arbitrary or fanciful and is inherently distinctive as applied to the services described in paragraph 6 .

12. Orion International has developed extensive goodwill and reputation for the quality of its services provided under the ORION INTERNATIONAL mark.

**b. Orion Recruiting's Actions**

13. Upon information and belief, defendant Orion Recruiting was formed as a Delaware Limited Liability Company in June 2002.

14. Upon information and belief, Orion Recruiting is an employment recruiting and placement firm which provides services in placing candidates into the medical, health care, and information technology industries, among others. Upon information and belief,

Orion Recruiting has more than 100 recruiters nationwide and has more than 1200 open job orders nationwide at any one time.

15. Orion Recruiting provides its services under the mark ORION RECRUITING.

16. Upon information and belief, Orion Recruiting first began to provide services under the mark ORION RECRUITING in 2003.

**c. Other Relevant Facts**

17. Upon information and belief, both Orion International and Orion Recruiting provide their services in the same channels of trade, and each services both employers and job seekers, throughout the United States.

18. The dominant portion of both the ORION INTERNATIONAL and the ORION RECRUITING marks is the word "Orion."

19. The mark ORION RECRUITING, when used in conjunction with recruiting and job placement services, is confusingly similar to ORION INTERNATIONAL so that consumers of the services are likely to be confused and mistaken as to whether the services originate from a single source, and deceived as to the source of the services.

**FIRST CAUSE OF ACTION**  
**(Service Mark Infringement: 15 U.S.C. §1114)**

20. Orion International repeats and realleges the allegations in paragraphs 1 through 19.

21. By its aforesaid conduct and use of ORION RECRUITING in commerce, defendant Orion Recruiting has unlawfully infringed upon the rights protected by Orion International's registered mark in violation of 15 U.S.C. §1115(a).

22. Defendant has refused to cease and desist from its unlawful conduct, despite demand.

23. Upon information and belief, defendant's infringement has been willful, making this an exceptional case.

24. As a result of defendant's infringing conduct, plaintiff has suffered damages, and will suffer immediate and irreparable injury unless defendant is enjoined from its unlawful activities; therefore, plaintiff is without an adequate remedy at law.

**SECOND CAUSE OF ACTION**  
**(Unfair Competition, Infringement of Common Law**  
**Service Mark, False Designation of Origin,**  
**Sponsorship or Approval: 15 U.S.C. §1125(a))**

25. Orion International repeats and realleges the allegations in paragraphs 1 through 24.

26. The mark "ORION INTERNATIONAL" has become uniquely associated with plaintiff and is inherently distinctive in the recruiting and job placement marketplace.

27. Defendant's use in commerce of ORION and ORION RECRUITING has, on information and belief, caused and is likely to cause confusion, mistake and deception as to the affiliation, connection or association of the defendant with the plaintiff.

28. Defendant's use of a mark confusingly similar to plaintiff's ORION INTERNATIONAL, has, on information and belief, caused actual confusion and is likely to cause confusion, mistake and deception as to the origin of defendant's services and as to the sponsorship or approval of defendant's activities by the plaintiff.

29. The acts and conduct of defendant are in violation of 15 U.S.C. §1125(a)(1).

30. Defendant has refused to cease and desist from its unlawful acts, despite demand.

31. Upon information and belief, defendant's unlawful actions have been willful, making this an exceptional case.

32. As a result of defendant's unlawful conduct, plaintiff has suffered damages, and will suffer immediate and irreparable injury unless defendant is enjoined from its unlawful activities; therefore, plaintiff is without an adequate remedy at law.

**THIRD CAUSE OF ACTION**  
**(State Deceptive Trade Practices:**  
**6 Del.C. §2532)**

33. Orion International repeats and realleges the allegations in paragraphs 1 through 32.

34. Defendant has engaged in deceptive trade practices, in violation of 6 Del. C. §2532 (2, 3), in that it has (a) caused a likelihood of confusion or misunderstanding as to the

source, sponsorship, approval, or certification of its services and/or (b) caused a likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, plaintiff.

35. Upon information and belief, defendant has willfully engaged in the deceptive trade practices described in the preceding paragraphs, making this an exceptional case.

36. As a result of defendant's unlawful deceptive trade practices, plaintiff has suffered damages, and will suffer immediate and irreparable injury unless defendant is enjoined from its unlawful activities; therefore, plaintiff is without an adequate remedy at law.

**FOURTH CAUSE OF ACTION**  
**(Common Law Service Mark Infringement)**

37. Orion International repeats and realleges the allegations in paragraphs 1 through 36.

38. Defendant's use of ORION RECRUITING in commerce constitutes common law service mark infringement.

39. Upon information and belief, defendant's unlawful actions have been willful, making this an exceptional case.

40. As a result of defendant's unlawful conduct, plaintiff has suffered damages, and will suffer immediate and irreparable injury unless defendant is enjoined from its unlawful activities; therefore, plaintiff is without an adequate remedy at law.

**WHEREFORE**, Orion International prays that the Court issue an order granting plaintiff relief as follows:

1. Issuing a preliminary and permanent injunction enjoining Defendant, its officers, agents, servants, employees, employees and attorneys, and all those in active concert or participation with them, from:

a. infringing plaintiff's ORION INTERNATIONAL service mark and from using any name or mark that is confusingly similar to ORION INTERNATIONAL; and

b. doing any other act or thing likely to induce the belief that defendant's services are in any way connected with plaintiff's business or services, or are sponsored or approved by or affiliated with plaintiff's business or services.

2. Ordering an award of damages in an amount to be determined at trial;

3. Ordering an award of damages, profits, and treble damages as provided in 15 U.S.C. §1117 and state statutes for willfulness;

4. Ordering an award of attorneys' fees, together with the costs of this action as provided in 15 U.S.C. §1117(a), and state statutes;

5. Ordering destruction of all advertising, letterhead and all other articles bearing the infringing marks, as provided in 15 U.S.C. §1118.

6. Ordering defendant to file with this Court and serve on plaintiff's counsel within thirty (30) days after the entry of an injunction issued by this Court, a sworn written



statement setting forth how defendant has complied with the injunction and the Court's Order;  
and

7. Ordering such other and further relief as the Court deems proper.


**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues in this case.

Of Counsel:

Paul I. Perlman (*pro hac vice* pending)  
Joseph P. DiVincenzo (*pro hac vice* pending)  
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Dated: May 8, 2006

  
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(302)-651-7700  
Attorneys for Plaintiff Orion International  
Consulting Group Inc.

# **EXHIBIT 1**



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Typed Drawing

Word Mark	ORION INTERNATIONAL
Goods and Services	IC 035. US 100 101 102. G & S: Employment hiring, recruiting, placement, staffing and career networking services. FIRST USE: 19910000. FIRST USE IN COMMERCE: 19910000
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	78236384
Filing Date	April 10, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	December 30, 2003
Registration Number	2825223
Registration Date	March 23, 2004
Owner	(REGISTRANT) Tully, James R INDIVIDUAL UNITED STATES Orion International 143 4th Avenue N Franklin TENNESSEE 37064  (LAST LISTED OWNER) ORION INTERNATIONAL CONSULTING GROUP, INC. CORPORATION NORTH CAROLINA 5511 CAPITAL CENTER DRIVE SUITE 216 RALEIGH NORTH CAROLINA 27606
Assignment Recorded	ASSIGNMENT RECORDED
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INTERNATIONAL" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK

Register PRINCIPAL  
Live/Dead  
Indicator LIVE

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JS 44 (Rev 11/04)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ORION INTERNATIONAL CONSULTING GROUP, INC.

(b) County of Residence of First Listed Plaintiff Wake County, North Carolina  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Frederick L. Cottrell, III  
Jeffrey L. Moyer  
Anne Shea Gaza  
Richards, Layton & Finger  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801  
302-651-7700

## DEFENDANTS

THE ORION RECRUITING GROUP LLC

County of Residence of First Listed Defendant New Castle County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal	<input type="checkbox"/> 400 State Reappointment
120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> 410 Antitrust
130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 430 Banks and Banking
140 Negotiable Instrument	<input type="checkbox"/> 320 Assault Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 450 Commerce
150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 640 R.R. & Truck	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 460 Deportation
151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth In Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 490 Cable/Sat TV
160 Stockholder's Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 850 Securities/Commodities Exchange
195 Contract Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 720 Labor Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
196 Franchise	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 443 Housing Accommodations	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl Ret Inc Security Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Eject	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property					<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Justice

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §1051  
Brief description of cause: Service mark infringement, false designation.

## VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

Injunction, Damages

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE May 8, 2006

SIGNATURE OF ATTORNEY OF RECORD


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RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

## Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs - Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8 (a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause.

**V. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**VI. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C. Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.  
(rev. 07/89)